

## REMARKS

This paper is filed in response to the Office Action mailed on June 8, 2004. Currently, Claims 353-373 and 422-487 are pending. Claims 353-359, 443, 444, 471, 477, and 484-487 are canceled without prejudice to the filing of continuing applications for the subject matter of the canceled claims. Claims 488-495 are new. Examination of Claims 360-373, 422-442, 445-470, 472-476, 478-483, and 488-495 is respectfully requested.

### Double Patenting

Claims 353-373 and 422-487 are rejected under the judicially created doctrine of obviousness-type double patenting. All double patenting rejections are noted to be provisional obviousness-type double patenting rejections. Accordingly, applicant will await the indication of allowable subject matter at which time applicant will either address the substance of the double patenting rejection or file a terminal disclaimer.

### The Rejection of Claims 438 and 484 Under 35 U.S.C. § 112, Second Paragraph

Claims 438 and 484 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 438 and 484 have been amended. Accordingly, the rejection is now moot.

### The Rejection of Claims 430-432 Under 35 U.S.C. § 102(b)

Claims 430-432 are rejected under 35 U.S.C. § 102(b) as being anticipated by DE 2242865 A.

As now amended, Claim 430 recites "combining a first quantity of meat with a second quantity of meat, wherein at least one of said quantities of meat has been treated with a measured amount of carbon dioxide and an amount of water that replaces water that evaporates from the meat during processing, wherein the amount of water is based on the amount of carbon dioxide."

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For a reference to be anticipatory, the reference must exactly describe the claimed invention. Because reference DE 2242865 A does not describe adding an amount of water wherein the amount of water is based on the amount of carbon dioxide, the reference is not anticipatory.

Furthermore, the DE 2242865 A reference does not describe or remotely teach or suggest the invention that is defined by Claim 430.

Claims 431 and 432 depend from Claim 430. Accordingly, withdrawal of the rejection of Claims 430-432 is respectfully requested.

The Rejection of Claims 353-356, 358, 359, and 477 Under 35 U.S.C. § 103(a)

Claims 353-356, 358, 359, and 477 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Groves et al. (U.S. Patent No. 4,171,164) in view of Inglis et al. (U.S. Patent No. 6,224,930), Goldsmith (U.S. Patent No. 5,306,466), and McFarland (U.S. Patent No. 3,992,985).

Claims 353-356, 358, 359, and 477 have been canceled without prejudice to filing continuing applications for the subject matter of the canceled claims. Accordingly, the rejection of Claims 353-356, 358, 359, and 477 is now moot.

The Rejection of Claim 357 Under 35 U.S.C. § 103(a)

Claim 357 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Groves et al. in view of Inglis et al., McFarland, and Goldsmith, as applied above, and further in view of the *Wiley Encyclopedia of Packaging Technology*, 2d ed.

Claim 357 has been canceled without prejudice. Accordingly, the rejection of Claim 357 is now moot.

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The Rejection of Claims 360-365, 463, and 478 Under 35 U.S.C. § 103(a)

Claims 360-365, 463, and 478 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the *Wiley Encyclopedia of Packaging Technology*, 2d ed., in view of Goldsmith and Cheng (U.S. Patent No. 4,818,548).

As now amended, Claim 360 recites "introducing a gas into the packages at a positive pressure to dissolve some of the gas therein, wherein the gas comprises carbon dioxide and carbon monoxide; sealing the packages with a flexible lid; and testing the meat for the presence of bacteria, wherein further absorption of the gas by the meat does not result in substantial inward deformation of the lid."

As now amended, Claim 360 is related to a process whereby a gas at a positive pressure is allowed to dissolve within the meat. Such initial dissolution of gas in meat is sufficient to prevent any further absorption of the gas by the meat so as not to substantially deform the lid.

A *prima facie* case of obviousness requires a suggestion or motivation in the references or in the knowledge that is generally available to modify a reference or to combine references. There must be a reasonable expectation of success, and all the claim elements must be found in the prior art references.

The cited and applied references do not describe or remotely teach or suggest the invention that is defined by Claim 360. Additionally, none of the prior art references cite the advantages noted with the method defined by Claim 360.

Claims 361-365, 463, and 478 are dependent from Claim 360. Accordingly, withdrawal of the rejection of Claims 360-365, 463, and 478 under 35 U.S.C. § 103(a) is respectfully requested.

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The Rejection of Claims 366-368, 427, 464, and 479 Under 35 U.S.C. § 103(a)

Claims 366-368, 427, 464, and 479 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cheng in view of Goldsmith and McFarland.

As now amended, Claim 366 recites "exposing the meat to carbon dioxide at a pressure greater than 100 psig before or during grinding, wherein carbon dioxide inhibits bacterial growth, and after grinding, exposing the meat to carbon dioxide at a pressure greater than 300 psig."

Applicant submits that the cited and applied references do not describe or remotely suggest all of the elements of the invention that is defined by Claim 366.

Claims 367, 368, 427, 464, and 479 depend from Claim 366. Accordingly, withdrawal of the rejection of Claims 366-368, 427, 464, and 479 is respectfully requested.

The Rejection of Claims 369, 373, 428, 441, 442, 447-450, 462, 466, 468, and 480 Under 35 U.S.C. § 103(a)

Claims 369, 373, 428, 441, 442, 447-450, 462, 466, 468, and 480 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Groves et al. in view of DE 2242865 A and Montanari et al. (U.S. Patent No. 5,478,990).

As now amended, Claim 369 recites "harvesting meat portions from an animal, wherein the amount of fat in each portion is determined."

As now amended, Claim 428 recites "harvesting meat portions comprised of several components, wherein the amount of fat in each portion is determined."

Applicant submits that the cited and applied references do not describe or remotely suggest all of the elements of the invention that is defined by Claim 369 or 428. Claims 373, 441, 442, 447-450, 462, 466, 468, and 480 are dependent from either one of Claim 369 or

Claim 428. Accordingly, withdrawal of the rejection of Claims 369, 373, 428, 441, 442, 447-450, 462, 466, 468, and 480 is respectfully requested.

The Rejection of Claims 370-372 Under 35 U.S.C. § 103(a)

Claims 370-372 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Groves et al., in view of DE 2242865 A and Montanari et al., as applied above, and further in view of Inglis et al.

Claims 370-372 are dependent from Claim 369, which is discussed above. The additional teachings of the Inglis reference do not render the invention defined by Claim 369 obvious. Applicant submits that the cited and applied references do not teach or suggest all of the elements recited in Claim 369. Accordingly, withdrawal of the rejection of Claims 370-372 is respectfully requested.

The Rejection of Claims 422, 423, 425, 426, 461, 465, and 481 Under 35 U.S.C. § 103(a)

Claims 422, 423, 425, 426, 461, 465, and 481 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cheng in view of Shaklai (U.S. Patent No. 6,270,829).

As now amended, Claim 422 recites "transferring the individual packages to a separate barrier container substantially impermeable to oxygen, wherein the individual packages occupy less than 50% of the volume of the barrier containers."

Applicant submits that the cited and applied references do not describe or remotely suggest all of the elements of the invention that is defined by Claim 422.

Claims 423, 425, 426, 461, 465, and 481 are dependent from Claim 422. Accordingly, withdrawal of the rejection of Claims 422, 423, 425, 426, 461, 465, and 481 is respectfully requested.

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The Rejection of Claim 424 Under 35 U.S.C. § 103(a)

Claim 424 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Cheng, in view of Shaklai as applied to both, and further in view of Goldsmith.

Claim 424 is dependent from Claim 422, discussed above. The additional teachings of the Goldsmith reference do not render the invention defined by Claim 422 obvious. Applicant submits that the cited and applied references do not teach or suggest all of the elements recited in Claim 422. Accordingly, withdrawal of the rejection of Claim 424 is respectfully requested.

The Rejection of Claims 429 and 467 Under 35 U.S.C. § 103(a)

Claims 429 and 467 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Groves et al., in view of DE 2242865 A and Montanari et al., as applied above, and further in view of Shaklai.

Claims 429 and 467 are dependent from Claim 428, discussed above. The additional teachings of the Shaklai reference do not render the invention defined by Claim 428 obvious. Applicant submits that the cited and applied references do not teach or suggest all of the elements recited in Claim 428. Accordingly, the rejection of Claims 429 and 467 is respectfully requested.

The Rejection of Claims 433, 434, and 437 Under 35 U.S.C. § 103(a)

Claims 433, 434, and 437 are rejected under 35 U.S.C. § 103(a) as being unpatentable over DE 2242865 A as applied above, and further in view of Goldsmith.

Claims 433, 434, and 437 are dependent from Claim 430, discussed above. The additional teachings of the Goldsmith reference do not render the invention defined by Claim 430 obvious. Applicant submits that the cited and applied references do not teach or suggest all of the elements recited in Claim 430. Accordingly, withdrawal of the rejection of Claims 433, 434, and 437 is respectfully requested.

The Rejection of Claims 435 and 436 Under 35 U.S.C. § 103(a)

Claims 435 and 436 are rejected under 35 U.S.C. § 103(a) as being unpatentable over DE 2242865 A, in view of Goldsmith as applied above, and further in view of Shaklai.

Claims 435 and 436 are dependent from Claim 430, discussed above. The additional teachings of the Shaklai reference do not render the invention defined by Claim 430 obvious. Applicant submits that the cited and applied references do not teach or suggest all of the elements recited in Claim 430. Accordingly, withdrawal of the rejection of Claims 435 and 436 is respectfully requested.

The Rejection of Claims 438, 439, 469, 482, and 483 Under 35 U.S.C. § 103(a)

Claims 438, 439, 469, 482, and 483 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Groves et al. in view of Cheng.

As now amended, Claims 438 and 439 recite, "transferring a first stream of meat to a device for measuring water," and "transferring a second stream of meat to a device for measuring water." Neither of the references describes or remotely suggests measuring the water of the meat.

Applicant submits that the cited and applied references do not describe or remotely suggest all of the elements of the invention that is defined by Claims 438 and 439.

Claims 469, 482, and 483 are dependent from either one of Claim 438 or Claim 439. Accordingly, withdrawal of the rejection of Claims 438, 439, 469, 482, and 483 is respectfully requested.

The Rejection of Claim 440 Under 35 U.S.C. § 103(a)

Claim 440 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Cheng, in view of Goldsmith and McFarland, as applied above, and further in view of Montanari et al.

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Claim 440 is dependent from Claim 366, discussed above. The additional teachings of the Montanari reference do not render the invention defined by Claim 366 obvious. Applicant submits that the cited and applied references do not teach or suggest all of the elements recited in Claim 366. Accordingly, withdrawal of the rejection of Claim 440 is respectfully requested.

The Rejection of Claims 443 and 444 Under 35 U.S.C. § 103(a)

Claims 443 and 444 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Groves et al., in view of Inglis et al., Goldsmith, and McFarland, as applied above, and further in view of Montanari et al.

Claims 443 and 444 have been canceled without prejudice to the filing of a continuation application for the subject matter of the canceled claims. Accordingly, the rejection of Claims 443 and 444 is now moot.

The Rejection of Claims 445 and 446 Under 35 U.S.C. § 103(a)

Claims 445 and 446 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Wiley, in view of Cheng and Goldsmith, as applied above, and further in view of Montanari et al.

Claims 445 and 446 are dependent from Claim 360, discussed above. The additional teachings of the Montanari reference do not render the invention defined by Claim 360 obvious. Applicant submits that the cited and applied references do not teach or suggest all of the elements of the invention defined by Claim 360. Accordingly, withdrawal of the rejection of Claims 445 and 446 is respectfully requested.

The Rejection of Claims 451 and 452 Under 35 U.S.C. § 103(a)

Claims 451 and 452 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cheng, in view of Goldsmith and McFarland, as applied above, and further in view of Montanari et al.

Claims 451 and 452 are dependent from Claim 366, discussed above. The additional teachings of the Montanari reference do not render the invention defined by Claim 366 obvious. Applicant submits the cited and applied references do not teach or suggest all of the elements of Claim 366. Accordingly, withdrawal of the rejection of Claims 451 and 452 is respectfully requested.

The Rejection of Claims 455 and 456 Under 35 U.S.C. § 103(a)

Claims 455 and 456 are rejected under 35 U.S.C. § 103(a) as being unpatentable over DE 2242865 A, in view of Goldsmith, as applied above, and further in view of Montanari et al.

Claims 455 and 456 are dependent from Claim 430, discussed above. The additional teachings of the Montanari reference do not render the invention defined by Claim 430 obvious. Applicant submits the cited and applied references do not teach or suggest all the elements of the invention defined by Claim 430. Accordingly, withdrawal of the rejection of Claims 455 and 456 is respectfully requested.

The Rejection of Claims 457-460 Under 35 U.S.C. § 103(a)

Claims 457-460 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Groves et al., in view of Cheng, as applied above, and further in view of Montanari et al.

Claims 457-460 are dependent from one of either Claim 438 or Claim 439, both discussed above. The additional teachings of the Montanari reference do not render the invention defined by either one of Claims 438 or Claim 439 obvious. Applicant submits the cited and applied references do not teach or suggest all the elements of the invention defined by Claims 438 and 439. Accordingly, withdrawal of the rejection of Claims 457-460 is respectfully requested.

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The Rejection of Claim 470 Under 35 U.S.C. § 103(a)

Claim 470 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Groves et al., in view of Cheng, as applied above, and further in view of EP 94877 A2.

Claim 470 is dependent from Claim 439, discussed above. The additional teachings of the reference EP 94877 A2 do not render the invention defined by Claim 439 obvious. Applicant submits the cited and applied references do not teach or suggest all of the elements of Claim 439. Accordingly, withdrawal of the rejection of Claim 470 is respectfully requested.

The Rejection of Claim 471 Under 35 U.S.C. § 103(a)

Claim 471 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Groves et al., in view of Inglis et al., Goldsmith, and McFarland, as applied above, and further in view of EP 94877 A2.

Claim 471 is dependent from Claim 353, which has been canceled. Claim 471 is likewise canceled without prejudice to the filing of a continuation application for the subject matter of the canceled claim. Accordingly, the rejection of Claim 471 is now moot.

The Rejection of Claim 472 Under 35 U.S.C. § 103(a)

Claim 472 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Wiley, in view of Cheng and Goldsmith, as applied above, and further in view of EP 94877 A2.

Claim 472 is dependent from Claim 360, discussed above. The additional teachings of the reference EP 94877 A2 do not render the invention defined by Claim 360 obvious. Applicant submits that the cited and applied references do not teach or suggest all of the elements that are recited in Claim 360. Accordingly, withdrawal of the rejection of Claim 472 is respectfully requested.

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The Rejection of Claim 473 Under 35 U.S.C. § 103(a)

Claim 473 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Cheng, in view of Goldsmith and McFarland, as applied above, and further in view of EP 94877 A2.

Claim 473 is dependent from Claim 366, discussed above. The additional teachings of the reference EP 94877 A2 do not render the invention defined by Claim 366 obvious. Applicant submits that the cited and applied references do not teach or suggest all of the elements recited in Claim 366. Accordingly, withdrawal of the rejection of Claim 473 is respectfully requested.

The Rejection of Claims 474-475 Under 35 U.S.C. § 103(a)

Claims 474-475 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Groves et al., in view of DE 2242865 A and Montanari et al., as applied above, and further in view of EP 94877 A2.

Claims 474 and 475 are dependent from Claims 369 and 428, respectively, which are discussed above. The additional teachings of the reference EP 94877 A2 do not render the invention that is defined by either one of Claims 369 and 428 obvious. Applicant submits that the cited and applied references do not teach or suggest all of the elements that are recited in either one of Claims 369 and 428. Accordingly, withdrawal of the rejection of Claims 474 and 475 is respectfully requested.

The Rejection of Claim 476 Under 35 U.S.C. § 103(a)

Claim 476 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Groves et al., in view of DE 2242865 A, Montanari et al., and Shaklai, as applied above, and further in view of EP 94877 A2.

Claim 476 is dependent from Claim 428, discussed above. The additional teachings of the reference EP 94877 A2 do not render the invention defined by Claim 428 obvious. Applicant

submits that the cited and applied references do not teach or suggest all of the elements of Claim 428. Accordingly, withdrawal of the rejection of Claim 476 is respectfully requested.

The Rejection of Claim 484 Under 35 U.S.C. § 103(a)

Claim 484 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Groves et al., in view of McFarland.

Claim 484 is canceled without prejudice to the filing of a continuation application for the subject matter of the canceled claims. Accordingly, the rejection of Claim 484 is now moot.

The Rejection of Claims 485 and 486 Under 35 U.S.C. § 103(a)

Claims 485 and 486 are rejected under 35 U.S.C. § 103(a) as being unpatentable over DE 2242865 A, in view of Inglis et al.

Claims 485 and 486 have been canceled without prejudice to the filing of a continuation for the subject matter of the canceled claims. Accordingly, the rejection of Claims 485 and 486 is now moot.

The Rejection of Claim 487 Under 35 U.S.C. § 103(a)

Claim 487 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Groves et al., in view of Inglis et al., and DE 3712042 A1.

Claim 487 has been canceled without prejudice to the filing of a continuation application for the subject matter of the canceled claim. Accordingly, the rejection of Claim 487 is now moot.

New Claims 488-495

New Claims 488-495 are included to further define some of the subject. Applicant submits that Claims 488-495 are neither anticipated nor rendered obvious by the cited and applied references, when considered alone or in combination.

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CONCLUSION

In view of the foregoing amendments and remarks, applicant submits that this application is in condition for allowance. If the Examiner has any further questions, the Examiner is invited to contact the applicant's attorney at the number provided below.

Respectfully submitted,

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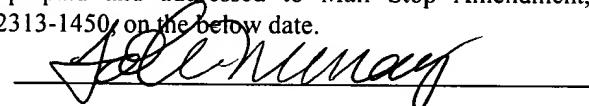


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